

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Suspension Order Against:

OLAJID OLUSOLA GBENLE,

Pharmacy Technician License
No. TCH 75623

Respondent.

Case No. 5799

OAH No. 2016040407

DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on April 27, 2016, in Oakland, California.

Complainant Virginia Herold, Executive Officer, Board of Pharmacy, was represented by Timothy J. McDonough, Deputy Attorney General.

Respondent Olajid Olusola Gbenle did not appear at hearing.

The matter was submitted on April 27, 2016.

FACTUAL FINDINGS

1. Virginia Herold, Executive Officer, Board of Pharmacy (Board), brought the Petition for Interim Suspension Order against Olajid Olusola Gbenle (respondent), in her official capacity as the Executive Officer of the Board. Respondent failed to appear at hearing. Compliance with the service and notice requirements under Business and Professions Code section 494 was established. Accordingly, this matter proceeded by way of Board hearing for decision.

2. On May 4, 2007, the Board issued Pharmacy Technician License Number TCH 75623 to respondent. The Pharmacy Technician License was in full force and effect at the time of the events described below and will expire on March 31, 2017, unless renewed.

3. Complainant filed a petition for an interim suspension order on April 8, 2016, under Business and Professions Code section 494,¹ based upon allegations of theft and illegal possession of Norco, amphetamine-dextroamphetamine, and hydromorphone, controlled substances. Complainant alleges that pursuant to section 494, subdivision (a), respondent's conduct demonstrates that he engaged in acts constituting violations of the Business and Professions Code, and that permitting respondent to retain his pharmacy technician license would pose a threat to the public health, safety and welfare.

4. The declaration of Board Inspector Hilda Nip, executed under penalty of perjury, established the facts set forth in Factual Findings 5 through 7.

5. In January 2016, respondent's employer, Walgreens pharmacy, conducted a random drug screening at the workplace. Respondent tested positive for marijuana, hydrocodone, and hydromorphone, controlled substances. Respondent admitted verbally and in writing, to the Walgreens loss prevention investigators, the following:

a. Starting before October 2014, he stole and self-administered controlled substances, including at least 100 tablets of hydrocodone with acetaminophen (Norco);

b. He had been diagnosed with a condition that caused back pain approximately three years ago, and he began to self-medicate with Norco, which he stole while working as a Walgreens' pharmacy technician;

c. He started taking two tablets of Norco every day and then gradually developed a dependency of up to 10 tablets every day; and,

d. In December 2015, he obtained a medical marijuana card and started using medical marijuana.

6. On February 4, 2016, the Board received a report from Walgreens that respondent had pilfered controlled substances from the pharmacy.

7. Inspector Nip conducted an investigation on behalf of the Board. As part of her investigation she interviewed respondent on March 29, 2016. Respondent admitted that he stole and self-administered Norco without a valid prescription from his employer. Other than marijuana and Norco, respondent denied taking any other controlled substances from Walgreens.

8. No evidence of mitigation or rehabilitation was presented.

¹ All further references are to the Business and Professions Code, unless otherwise indicated.

9. Respondent's conduct violated his duties and obligations under the Business and Professions Code insofar as his acts were dishonest (§ 4301, subd. (f)) and violated state and federal statutes that regulate controlled substances and drugs (§ 4301, subd. (j).) Respondent's theft of controlled substances and his illegal possession and use of controlled substances demonstrate that permitting him to continue practicing as a pharmacy technician pending the filing of an accusation and a decision rendered thereon would endanger the public health, safety or welfare.

LEGAL CONCLUSIONS

1. Pursuant to section 494, subdivision (a), an interim order of suspension may be issued if it is established, first, that the licensee has violated the Business and Professions Code, and second, that permitting the licensee to continue practicing under his license would endanger the public health, safety or welfare. The standard of proof for the issuance of an interim suspension order is preponderance of the evidence. (§ 494, subd. (e).)

2. An interim suspension order is of limited duration, remaining in effect only as long as the licensing board follows strict requirements to expeditiously afford the licensee a full hearing on the charges. Pursuant to section 494, subdivision (e), following issuance of the order, the Board must file an accusation within 15 days. If the licensee files a notice of defense, a hearing must be held within 30 days and a decision issued within 30 days of the submission of the matter.

3. While working as a pharmacy technician, respondent stole controlled substances from his employer, and used the controlled substances for his personal use. (Findings 5 through 7.) These acts constitute violations of Business and Professions Code section 4301, subdivisions (f) and (j). Respondent's actions reflect dishonesty and improper use of controlled substances; and insofar as his conduct poses a serious danger of harm to the public, he should not be permitted to continue practicing as a pharmacy technician. (Factual Finding 9.)

4. Cause exists for issuance of an interim order of suspension under section 494. The petition for an interim suspension order should be granted and respondent's pharmacy technician license should be suspended until an accusation may be filed against respondent in accordance with section 494, subdivision (f), and a decision is rendered thereon.

ORDER

The petition for interim suspension order pursuant to section 494 is granted. Pharmacy Technician License Number TCH 75623 issued to respondent Olajid Olusola Gbenle is immediately suspended. Respondent is restrained from directly or indirectly practicing as a pharmacy technician in California and from having access to pharmacy settings pending the hearing and decision on the accusation against him. Failure of petitioner to comply with any of the requirements contained in section 494, subdivision (f), shall dissolve the interim suspension order by operation of law.

DATED: May 4, 2016

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Regina Brown
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REGINA BROWN
Administrative Law Judge
Office of Administrative Hearings